



Federal Communications Commission
Washington, DC 20554

International Bureau

DA 03-4043

December 19, 2003

Robert A. Mazer
Vinsen & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004-1007

Re: Application for Modification of Ka-Band Space Station Authorization, File Nos.
SAT-MOD-20030829-00290; SAT-LOA-19950929-00150; Call Sign S2204.

Dear Mr. Mazer:

On August 29, 2003, you filed with the Commission, as counsel to NetSat 28 Company, L.L.C. ("NetSat"), an application to modify NetSat's authorization to launch and operate a Fixed-Satellite Service ("FSS") network in the Ka-band ("Modification Application").¹ For the reasons discussed below, we dismiss a portion of the Modification Application as defective. The Modification Application also contains a request to extend, or waive, the remaining construction milestones for NetSat's underlying Ka-band space station authorization. Because the milestone extension request can be addressed separately from the other aspects of the Modification Application, we will place NetSat's milestone extension request on public notice, despite the incompleteness of the remaining aspects of the Modification Application.

As early as 1998, the International Bureau emphasized that that space station applications "must include the information required in Section 25.114 of the Commission's rules," 47 C.F.R. §25.114. The Bureau stated that if any application failed to include any of the required information, it would return the application without prejudice as being unacceptable for filing. *See International Bureau To Streamline Satellite And Earth Station Processing*, Report No. SPB-140, October 28, 1998. The Commission affirmed this policy last year in its *First Space Station Reform Order*. *See Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd 10760, 10852 (para. 244) (2003).

In its Modification Application, NetSat does not submit the two-degree spacing interference analysis required by Section 25.114(c)(17) and 25.140(b)(2) of the Commission's rules, 47 C.F.R. §§ 25.114(c)(17) and 25.140(b)(2). Under the Commission rules, an applicant for space station authorization in the fixed-satellite service must demonstrate the compatibility of its proposed system two degrees away from any authorized space station, and should provide details of its proposed radiofrequency carriers which it believes should be taken into account in this analysis. *See* 47 C.F.R. § 25.140(b)(2). At a minimum, this analysis must include, for each type of radiofrequency carrier, the link noise budget,

¹ *NetSat 28 Company, L.L.C.*, Order and Authorization, 13 FCC Rcd 1392 (Int'l Bur. 1997), *declared null and void*, 15 FCC Rcd 11321 (Int'l Bur. 2000), *reinstated*, 16 FCC Rcd 11025 (Int'l Bur. 2001), *transfer of control granted*, 16 FCC Rcd 14471.


modulation parameters, and overall link performance analysis. *See id.* NetSat asserts that its proposed modification of its space station authorization will not cause harmful interference to adjacent satellites and that its interference calculations are based on a two-degree orbital spacing plan,² but does not provide any of the analysis required by Section 25.140(b)(2) to support its assertion.

In addition, NetSat's Modification Application states an intent to use frequencies outside of NetSat's authorized Ka-band frequencies to perform telemetry, tracking and control ("TT&C") functions for launch and transfer orbit operations.³ The Commission's rules, however, require that TT&C functions for U.S.-licensed satellites are to be conducted at either or both edges of the allocated bands for the service. *See* 47 C.F.R. § 25.202(g). Thus, the Modification Application is plainly inconsistent with the Commission's rules, and NetSat has not requested a waiver of the Commission's rules to permit such an inconsistency. As a result, the Modification Application is not acceptable for filing at this time.

Furthermore, as part of its Modification Application, NetSat has sought to modify its underlying space station authorization by extending or waiving its remaining construction milestones. Because we believe that the issues related to the request for extension or waiver of NetSat's license milestones can be addressed separately from NetSat's request to modify its authorization by adding another satellite to its network, we will place NetSat's milestone extension request for existing authorization on public notice for comment by interested parties and dismiss the remainder of the Modification Application as defective.

Accordingly, pursuant to the Commission's rules on delegated authority, 47 C.F.R. § 0.261(4), we find that Application File No. SAT-MOD-20030829-00290, Call Sign S2204, is defective with respect to the technical showing for the new satellite and that the portion of the application associated with the new satellite is unacceptable for filing.⁴ We therefore dismiss this portion of the application without prejudice to refiling. We shall, however, place NetSat's request for an extension or waiver of its underlying construction milestones on public notice.

Sincerely,


for Thomas S. Tycz
Satellite Division
International Bureau

² *See Modification Application* at 44.

³ *See Modification Application* at 9 (listing "extended" C-band frequencies at 3.6314-3.6350 GHz and 5.8565-5.860 GHz for transfer orbit telemetry and command functions).

⁴ If the applicant refiles an application identical to the one dismissed, with the exception of the provision of information intended to perfect the application, it need not pay a further application fee. *See* 47 C.F.R. § 1.1109(d).